

**AGREEMENT FOR THE CONVEYANCE OF LANDS
AND INTERESTS IN LANDS**

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AGREEMENT FOR THE CONVEYANCE OF LANDS AND INTERESTS IN LANDS

THIS AGREEMENT ("Agreement") is made and entered into as of the 31st day of January 2003 (the "Effective Date"), by and between CARGILL, INCORPORATED, a Delaware corporation, as "Grantor" and the UNITED STATES OF AMERICA acting by and through the Secretary of the Interior or her authorized representative (the "United States"), and the STATE OF CALIFORNIA acting by and through its Department of Fish and Game, Wildlife Conservation Board (the "State"), collectively, as "Grantees." Grantor, the United States and the State are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

Grantor desires to convey to Grantees the fee simple interest in certain real property and certain property rights owned by Grantor, situate and lying in the counties of Napa, San Mateo, Santa Clara and Alameda, State of California, identified as Components 1, 3, 4 (except as otherwise noted below) and 5 in the appraisal delivered to the United States on December 7, 2000, and illustrated on the map attached to this Agreement as Exhibit A. The transaction excludes all of Appraisal Component 2, the Redwood City Plant Site; Pond A-18, located in Appraisal Component 4; and the ditch adjacent to Moffett Field, legally described in Exhibit A-1 and the Brine Line Strip (as defined below).

NOW, THEREFORE, Grantor, the United States and the State agree as follows:

1. Property. Grantor agrees to convey to Grantees, and Grantees agree to acquire from the Grantor, upon the terms and conditions of this Agreement, all of the following:

(a) The fee simple interest (or easement interest as shown on Exhibit B-1) in and to those certain parcels of real property legally described on Exhibit B-1 attached to this Agreement, together with all of Grantor's right, title and interest, if any, in and to (i) all easements, tenements, hereditaments, privileges and appurtenances in any way belonging to such real property; (ii) all rights of way, if any, abutting, adjacent, contiguous to or adjoining such real property; and (iii) all development rights, air rights, mineral rights, water rights, water appropriations, ditches, ditch rights-of-way, ditch rights or other rights, benefits and privileges appurtenant to such real property (the "Alviso/West Bay Land"); and

(b) All Reserved Rights of Grantor in, on, and under that certain real property legally described on Exhibit B-2 attached to this Agreement (the "Leslie Rights"). As used in this Agreement, "Reserved Rights of Grantor" means all salt making rights held by Grantor, and any and all other rights held by Grantor that were retained by Grantor (formerly Leslie Salt Co.) in the condemnation action United States v. 15,347.61 Acres (C-77 1412, U. S. District Court, Northern District of California, filed June 30, 1977).

(c) The fee simple interest (or easement interest as shown on Exhibit C-1) in and to those certain parcels of real property legally described on Exhibit C-1 attached to this Agreement, together with all of Grantor's right, title and interest, if any, in and to (i) all easements, tenements, hereditaments, privileges and appurtenances in any way belonging to such real property; (ii) all rights of way, if any, abutting, adjacent, contiguous to or adjoining

such real property; and (iii) all development rights, air rights, mineral rights, water rights, water appropriations, ditches, ditch rights-of-way, ditch rights or other rights appurtenant to such real property (the "Baumberg/Napa Land"); and

(d) All of Grantor's Rights in and to the real property legally described on Exhibit C-2 attached to this Agreement (the "Baumberg Rights"). As used in this Agreement, "Grantor's Rights" means all rights, title and interest which were conveyed to or otherwise acquired or received by, excepted or reserved by or in favor of, or recognized, acknowledged, confirmed or ratified in Grantor's predecessor in interest, Leslie Salt Co., a Delaware Corporation, by the "Agreement for the Settlement of Pending Litigation Relating to Land in the City of Hayward, County of Alameda, California," (the "Settlement Agreement") recorded on May 6, 1985 as Series No. 85-87321 of Official Records of Alameda County, California.

The Alviso/West Bay Land, the Leslie Rights, the Baumberg/Napa Land and the Baumberg Rights are collectively referred to in this Agreement as the "Property."

2. Property Title. While Grantees have entered this transaction jointly with Grantor, the Grantees have determined, in their sole and absolute discretion, that title to the Alviso/West Bay Land and the Leslie Rights shall be vested directly into the possession of the United States and that title to the Baumberg/Napa Land and the Baumberg Rights shall be vested directly into the possession of the State. The Grantees have based this decision on, among other things, management considerations, federal and State law and regulations and Property features and location. As an accommodation to the Grantees, Grantor has agreed to convey the Property to the Grantees in accordance with Grantees' determination.

The Baumberg/Napa Land and the Baumberg Rights are collectively referred to in this Agreement as the "State Property." The Alviso/West Bay Land and the Leslie Rights are collectively referred to in this Agreement as the "United States Property."

3. Purchase Price. The total negotiated purchase price for the Property is ONE HUNDRED MILLION DOLLARS AND NO CENTS (\$100,000,000.00) (the "Purchase Price").

(a) The Purchase Price shall be paid to Grantor in immediately available funds at Close of Escrow. The Purchase Price shall be funded as follows. The United States shall be responsible for EIGHT MILLION DOLLARS AND NO CENTS (\$8,000,000.00) and the State shall be responsible for SEVENTY-TWO MILLION DOLLARS AND NO CENTS (\$72,000,000.00) of the Purchase Price. The Participating Foundations (as defined below) shall contribute, or cause to be contributed, the remaining TWENTY MILLION DOLLARS AND NO CENTS (\$20,000,000.00) of the Purchase Price. The "Participating Foundations" as used in this Agreement means the Richard and Rhoda Goldman Fund, the William and Flora Hewlett Foundation, the Gordon E. and Betty I. Moore Foundation, the David and Lucile Packard Foundation and the Resources Legacy Fund. The respective portions of the Purchase Price being provided by the United States, the State and the Participating Foundations shall be sent to Escrow Holder on or before the date one (1) business day prior to the date of Close of Escrow in immediately available funds to be placed in Escrow and disbursed in accordance with escrow instructions provided by the entity depositing the particular funds with Escrow Holder.

(b) The Parties acknowledge that an appraisal of the Property dated November 1, 2000, and delivered to the U.S. Fish and Wildlife Service on December 7, 2000, and an amendment of the appraisal, both prepared by Charles D. Bailey and Associates Dana Property Analysis, were prepared in accordance with Uniform Appraisal Standards for Federal Land Acquisitions (as amended by the Interagency Land Acquisitions Conference) and the Uniform Standards of Professional Appraisal Practice (USPAP) 2000 Edition established by the Appraisal Foundation, and met the specifications set forth by the United States and the State for such appraisals.

(c) Grantor represents that it believes the value of the Property exceeds the Purchase Price, and that Grantor intends to make a charitable gift to the Grantees to the extent of any excess of the fair market value of the Property, as ultimately determined by the relevant governmental authorities, over the Purchase Price. Grantor further represents that it intends to claim tax deductions on its tax returns by reason of such charitable gift. The United States and the State each acknowledge Grantor's intent to make a charitable contribution to Grantees to the extent of any excess of the fair market value of the Property the Grantees acquire over the Purchase Price for the Property. Neither the United States nor the State has made, or is making, any representation or warranty as to the tax treatment of the transaction this Agreement contemplates.

(d) Upon the Close of Escrow, to the extent that the fair market value of the Property, as ultimately determined by the relevant governmental authorities, exceeds the price paid for it pursuant to this Agreement, the Grantees accept the gift being made by Grantor pursuant to this Agreement.

Sections 3 (b) - (d) shall survive the Close of Escrow.

4. Escrow and Close of Escrow.

(a) An escrow account for this transaction (the "Escrow") has been opened with First American Title Company ("Escrow Holder"), 135 Main Street, Suite 1200, San Francisco, CA 94105, Escrow Nos. SP317776 and SP317782, Attn.: Kimberleigh J. Toci.

(b) In accordance with Section 2, Grantor will convey the Alviso/West Bay Land to the United States and the Baumberg/Napa Land to the State, by grant deeds in the forms attached as Exhibit D-1 (the "United States Grant Deeds") and Exhibit D-2 (the "State Grant Deeds"), respectively, subject to no exceptions to title other than exceptions approved by the State or the United States, as applicable, pursuant to Section 6 and the applicable Access Rights (as such term is defined in Section 6(g) below). The State Grant Deeds shall state on their face that, pursuant to California Revenue and Taxation Code Section 11922, there is no documentary transfer tax. Grantor will convey the Leslie Rights to the United States and the Baumberg Rights to the State by deeds in the forms attached hereto respectively as Exhibit E-1 (the "United States Rights Deeds") and Exhibit E-2 (the "State Rights Deed"), subject to no exceptions to title other than exceptions approved by the United States or the State, pursuant to Section 6 and the applicable Access Rights.

(c) Title to the Property (except (i) Pond SF-2 in Appraisal Component 3, which is more particularly described in Exhibit F-1 attached hereto and which is addressed in Section 4(i) below and (ii) the Quiet Title Parcel to be conveyed to the State, which is more particularly described in Exhibit F-2 attached hereto and addressed in Section 4(j) below) shall pass immediately upon Close of Escrow. “Close of Escrow” as used in this Agreement shall mean the recording of the United States Grant Deeds, the United States Rights Deeds, the State Grant Deeds and the State Rights Deed in the Official Records of Napa, San Mateo, Santa Clara and Alameda County, California, as applicable. Close of Escrow shall take place on or before 12:00 p.m. Pacific Standard Time on Thursday, March 6, 2003 (the “Closing Date”), unless the Parties otherwise agree in writing, in each Party’s sole discretion.

(d) Delivery of title to the State in accordance with this Agreement shall be evidenced by the issuance by First American Title Insurance Company (“Title Company”) to the State, at Close of Escrow, of the Title Company’s CLTA owner’s policy of title insurance (the “State Title Policy”), insuring the State in the amount specified by the State, not to exceed the full amount of the fair market value of the State Property, that the Baumberg Rights and fee simple title or easement interest, as applicable, to the Baumberg/Napa Land are vested in the State upon the Close of Escrow subject only to the exceptions approved by the State pursuant to Section 6 below and the applicable Access Rights. The State may choose to acquire ALTA coverage and/or endorsements to the State Title Policy. Grantor shall reasonably cooperate with the State in its efforts to obtain such ALTA coverage and/or endorsements, however, if the Title Company requires a current survey of the State Property (or any portion thereof) in connection with issuing ALTA coverage to the State, or payment, bonding or indemnification in connection with any endorsements the State may request, the State shall be solely responsible for satisfying such requirements and for all costs incurred in connection therewith. Further, the issuance of any such endorsements shall not be a condition to the Close of Escrow.

(e) It is mutually agreed by Grantor and the United States that an abstract, certificate of title, or other evidence of title to the Alviso/West Bay Land, satisfactory to the Attorney General of the United States, will be obtained by the United States at its expense. The issuance to the United States of ALTA coverage policy of title insurance shall satisfy this requirement (the “United States Title Policy”). If in connection therewith the Title Company requires a current survey of the United States Property (or any portion thereof) or the satisfaction of other conditions, the United States shall be solely responsible for preparing any such survey, and for all costs incurred in connection therewith, and for satisfying any conditions imposed by the Title Company to the issuance thereof.

(f) No later than one (1) business day before Close of Escrow, Grantor shall execute and deliver to Escrow Holder (i) an affidavit or qualifying statement that Grantor is not a “foreign person,” which satisfies the requirements of section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, and (ii) a California Franchise Tax Board Withholding Exemption Certificate (Form 593-W), establishing that Grantor is exempt from nonresident withholding requirements under the California Revenue and Taxation Code.

(g) At Close of Escrow, Grantor shall assign to the United States and the State, as applicable, and the United States and the State, as applicable, shall assume, the Approved Agreements (set forth in Exhibit G), if any. The assignments to the United States and State, if

any, shall each be evidenced by an Assignment and Assumption Agreement in the form of Exhibit H attached hereto (the “Assignment”).

(h) The Parties hereby designate the Escrow Holder as the “real estate reporting person” pursuant to section 6045(e) of the Internal Revenue Code of 1986, as amended.

(i) Pond SF-2, which is part of the Alviso/West Bay Land, is currently being investigated and remediated by the San Francisco Public Utilities Commission to address impacts due to a former skeet shooting range on adjacent property (“Contamination”). Notwithstanding anything contrary in this Agreement, Grantor shall retain title to Pond SF-2 until the completion of such remediation (“SF-2 Work”) as may be required to meet applicable clean up standards and accordingly to determine that no further action is necessary (“SF-2 Standard”). Grantor shall have no obligation under this Agreement to perform or cause to be performed the SF-2 Work, and in no event shall Grantor have any liability under this Agreement in connection with the SF-2 Work. Completion of the SF-2 Work shall be evidenced by either (a) written acknowledgement from all government agencies asserting jurisdiction over the SF-2 Work stating that the SF-2 Standard has been met and no further action is necessary (“SF-2 No Further Action Letter”); or if a SF-2 No Further Action Letter cannot be obtained, (b) a report signed by an Independent Licensed Professional that summarizes the work done to achieve the SF-2 Work and verifies that the SF-2 Standard has been achieved (“SF-2 Certification”). Grantor shall convey Pond SF-2 by gift to the United States pursuant to the terms of this Agreement, and by grant deed, after each and every one of the following conditions (collectively the “Completion of SF-2 Work”) have been met: (1) the SF-2 No Further Action Letter has been submitted to the United States if such SF-2 No Further Action Letter can be obtained or, if not, the SF-2 Certification has been submitted to the United States; (2) any equipment installed on the SF-2 Property in connection with the SF-2 Work has been removed and any material damage created as a result of such installation has been repaired or otherwise corrected; (3) any wells or borings installed by Grantor as part of the SF-2 Work have been legally closed; (4) no levees were left in a materially breached condition nor with any substantial holes or pits as a result of the SF-2 Work; (5) any waste generated in connection with the SF-2 Work has been removed from the Property; and (6) the United States concurs that the Completion of the SF-2 Work has been accomplished. The United States shall not unreasonably withhold or delay such concurrence. It is the intent of the Parties that no gift of Pond SF-2 shall take place until title is actually transferred to the United States.

An “Independent Licensed Professional” is a qualified professional licensed by the State as a Professional Engineer (P.E.), Registered Geologist (R.G.), Certified Engineering Geologist (C.E.G.), or Certified Hydrogeologist (C.H.G.) that is of recognized standing experienced in the evaluation of work of the type to be done and that is not in the direct employment of Grantor or any Affiliate of Grantor. “Affiliate” means any entity that controls, is controlled by, or is under common control with another entity.

(j) Appraisal Component 1 in Napa County, which is a part of the State Land, includes a parcel legally described on Exhibit F-2 (the “Quiet Title Parcel”). Although the Title Report prepared for the Quiet Title Parcel shows record title to the Quiet Title Parcel vested in third parties, Grantor believes it has had possession of the entire Quiet Title Parcel for a period of over ten (10) years, and Grantor has paid real property taxes and applicable assessments on

the Quiet Title Parcel for such period of time. On or before the Effective Date, Grantor shall commence preparing and shall use commercially reasonable efforts to pursue to final resolution at Grantor's sole cost, a quiet title action seeking to perfect fee simple title to the Quiet Title Parcel in Grantor ("Quiet Title Action"). Grantor will promptly initiate the Quiet Title Action by filing its pleadings with the Napa County Superior Court, and promptly thereafter shall provide the State with complete endorsed-filed copies of such pleadings. Upon request by the State, Grantor shall promptly inform the State of the progress and anticipated schedule of the Quiet Title Action. Notwithstanding anything to the contrary herein, Grantor shall retain title to the Quiet Title Parcel until the final resolution of the Quiet Title Action. Within sixty (60) days after the State receives notice from Grantor of the final resolution of the Quiet Title Action and provides the State with copies of all relevant documents, the State shall notify Grantor whether or not the State will accept the Quiet Title Parcel. If the State does not notify Grantor within such sixty (60)-day period, the State shall be deemed to have elected not to accept the Quiet Title Parcel and the State shall have no further rights under this Agreement with respect thereto. If the State elects to accept the Quiet Title Parcel, Grantor shall promptly convey the Quiet Title Parcel by gift to the State pursuant to the terms of this Agreement, as follows: (i) if the court grants judgment quieting title in Grantor, upon such judgment becoming final and having been recorded in the official records of Napa County, Grantor shall convey fee simple title to the Quiet Title Parcel to the State by grant deed in substantially the form attached hereto as Exhibit D-2; or (ii) in all other cases Grantor shall convey all of its right, title and interest, if any, in and to the Quiet Title Parcel to the State by quitclaim deed in the form attached hereto as Exhibit F-3 ("State Quitclaim Deed"). It is the intent of the Parties that no gift of the Quiet Title Parcel shall take place unless or until title is actually transferred to the State.

5. Conditions to Close of Escrow.

Grantor's obligation to convey the Property to Grantees, and Grantees' obligation to acquire the Property from Grantor, shall be conditioned upon and subject to each of the applicable conditions set forth in this Section 5 (collectively, the "Conditions" and individually a "Condition"). If any of the Conditions are not satisfied by the outside date for satisfaction of such applicable Condition as set forth in each paragraph of this Section 5 (the "Satisfaction Date"), or waived in writing by the appropriate benefited Party by the earlier of (i) the Close of Escrow or (ii) the Satisfaction Date, the benefited Party shall have the right in its sole discretion to terminate this Agreement by giving written notice of termination to the other Parties and upon any such termination the Parties shall have no further rights or obligations under this Agreement.

(a) Grantees' Conditions. The obligation of Grantees to acquire the Property shall be subject to the following conditions:

(i) Grantor, the United States and the State (acting by and through its Department of Fish and Game) shall have executed, in each Party's sole discretion, a definitive and final Phase Out Agreement (the "Phase Out Agreement"), and Grantor shall have performed all obligations which are to be performed under the Phase Out Agreement prior to Close of Escrow. A copy of the Phase Out Agreement is attached hereto as Exhibit I and made a part hereof.

(ii) Prior to Close of Escrow, Grantor shall have delivered to the United States and the State all disclosure statements, if any, required by statutory or common law in connection with the conveyance of the Property, including without limitation, under (i) any applicable statute identified in California Civil Code Section 1103.1(b) (natural hazards), (ii) California Health and Safety Code Section 25359.7 (hazardous substances), (iii) California Health and Safety Code Section 25915 - 25919.7 (asbestos), or (iv) 42 U.S.C. section 4852d (lead based paint).

(iii) Between the Effective Date and Close of Escrow, there shall have occurred no material adverse change in the physical or environmental condition of the Property as reasonably determined by the Grantor and Grantees.

(iv) Grantees shall have approved, in their sole discretion, the condition of title of the Property in accordance with Section 6 below and shall be reasonably satisfied with all Survey Matters (as defined in Section 6(h)) in accordance with Section 6(h).

(v) As of Close of Escrow, Grantor shall have caused each of the Disapproved Agreements (as defined in Section 7(a)) to terminate as of Close of Escrow and shall have provided Grantees with written evidence of such termination reasonably satisfactory to Grantees.

(vi) As of Close of Escrow, there shall be no outstanding lawsuit, action, arbitration, legal, judicial, administrative or other claim or proceeding, pending or threatened in writing: (i) against or relating to the Property or any portion thereof or (ii) against or relating to Grantor and which could affect Grantor's title to the Property or any portion thereof, or subject an owner of the Property or any portion thereof to any material liability.

(vii) On or before the date of Close of Escrow, Grantor shall have completed all of Grantor's Work which is to be performed under Section 9 of this Agreement as of the Close of Escrow.

(viii) On or before the Effective Date, Grantor shall have caused its environmental consultant, Erler & Kalinowski, Inc. ("EKI") to (i) extend in writing to the United States and the State the right to use and rely upon the Phase I Environmental Site Assessment of the Property which EKI prepared on behalf of Grantor, including any supplements or updates thereto (collectively, the "ESA"); and (ii) provide to the United States and the State an update to the ESA sufficient to comply with the provisions of American Society for Testing and Materials (ASTM) Standard E 1527-00 regarding the continued viability of environmental site assessments.

(ix) The Participating Foundations shall have deposited or caused to be deposited TWENTY MILLION DOLLARS AND NO CENTS (\$20,000,000.00) into Escrow with Escrow Holder and authorized or caused the depositor to authorize, Escrow Holder to apply such funds to the Purchase Price.

(x) As of the Close of Escrow, Grantor shall not be in material default in the performance of any covenant or agreement to be observed or performed by Grantor under this Agreement.

(xi) Prior to the Close of Escrow, the State shall have obtained and provided Grantor with evidence of the State Approvals set forth in Section 35, which shall be evidenced by delivery to Grantor of a fully executed signature page on behalf of the State.

(xii) The legal descriptions attached are in draft forms. Prior to the Close of Escrow the Parties shall have approved the final legal descriptions for the Property, for the ten (10) foot wide area excluded from the United States Property for the brine line (the "Brine Line Strip"), and for the easements described in Exhibits J, K and L, and for the ditch adjacent to Moffett Field.

(b) Grantor's Conditions. The obligation of Grantor to convey the Property shall be subject to the following conditions:

(i) As of the Close of Escrow, there shall be no outstanding lawsuit, action, arbitration, legal, judicial, administrative or other claim or proceeding, pending or threatened in writing: (i) against or relating to the Property or any portion thereof or (ii) against or relating to Grantor and which could affect Grantor's title to the Property or any portion thereof, or subject an owner of the Property or any portion thereof to any material liability.

(ii) As of the Close of Escrow, Grantees shall not be in material default in the performance of any covenant or agreement to be observed or performed by Grantees under this Agreement.

(iii) ONE HUNDRED MILLION DOLLARS AND NO CENTS (\$100,000,000.00) shall have been deposited into Escrow with Escrow Holder by or for the benefit of Grantees, and each depositor shall have authorized Escrow Holder to apply the depositor's funds to the Purchase Price.

(iv) Grantor, the United States and the State (acting by and through its Department of Fish and Game) shall have executed, in each Party's sole discretion, a definitive and final Phase Out Agreement, and Grantees shall have performed all obligations, if any, which are to be performed under the Phase Out Agreement prior to Close of Escrow.

(v) Prior to the Close of Escrow, Grantor shall have obtained Grantor's Approval in accordance with Section 35, and shall have provided Grantees with evidence of such approval, in accordance with Section 35.

(vi) The legal descriptions attached are in draft forms. Prior to the Close of Escrow, the Parties shall have approved the final legal descriptions for the Property, for the Brine Line Strip, and for the easements described in Exhibits J, K and L, and for the ditch adjacent to Moffett Field.

6. Title; Costs, Expenses and Prorations.

(a) Grantees shall cause the Title Company to deliver to the United States and the State, respectively, a current Preliminary Title Report for the United States Property and the State Property, as applicable, and copies of all of the available documents referred to therein as exceptions (the "Title Report"). Upon request, Grantor shall reasonably assist with such efforts.

By February 10, 2003, the United States and the State, respectively, shall have notified Grantor in writing of any exceptions contained in the Title Report, which the United States or the State, respectively, request Grantor to remove before the Close of Escrow ("Grantees' Title Notice"). Grantor shall cooperate with Grantees to remove any such objectionable exceptions before Close of Escrow, provided, however, that Grantor shall have no obligation to incur or undertake any cost, expense or liability in connection therewith. Notwithstanding the foregoing, Grantor shall be obligated to remove before the Close of Escrow deeds of trust or mortgages affecting the Property, any mechanics' liens affecting the Property and any other exceptions which secure the repayment of sums borrowed by or liquidated debts of Grantor (collectively, "Monetary Encumbrances"), provided, however, that Grantor hereby reserves all rights and remedies it may have against such lienors arising during and attributable to Grantor's period of ownership of the Property. Notwithstanding anything contained herein, Grantees hereby approve any matters which would be disclosed by a survey of the Property. Any and all exceptions to title approved or deemed approved by the State or the United States pursuant to this Section 6 shall be collectively referred to as "Approved Outstanding Rights."

(b) Within ten (10) days after Grantor receives Grantees' Title Notice, Grantor shall notify Grantees which of the exceptions identified in Grantee's Title Notice in addition to Monetary Encumbrances Grantor will remove and which it will not remove from title as of the Close of Escrow ("Grantor's Title Notice"). If Grantor is willing to remove an exception, but not before Close of Escrow, Grantor's Title Notice shall also state the time required to remove the objectionable title exception and the reason such additional time is needed. If Grantor fails to give Grantor's Title Notice within such ten (10) day period, Grantor shall be deemed to have elected to remove only Monetary Encumbrances. Within seven (7) days after the earlier of the date Grantees receive Grantor's Title Notice or the date of expiration of the ten (10) day period for Grantor to give Grantor's Title Notice, Grantees shall have the right, in Grantees' sole discretion, by written notice to Grantor to (i) elect to accept the title with all title exceptions other than Monetary Encumbrances and any other title exceptions which Grantor's Title Notice states Grantor will remove; or (ii) terminate this Agreement, and the Parties shall have no further rights or obligations under this Agreement. If Grantees do not provide such notice within such period, Grantor shall provide Grantees with written notice stating that Grantees shall have five (5) days from receipt of such notice, in Grantees' sole discretion, by written notice to Grantor, to (iii) accept the title with all title exceptions other than Monetary Encumbrances and any other title exceptions which Grantor's Title Notice states Grantor will remove; or (iv) terminate this Agreement, and the Parties shall have no further rights or obligations under this Agreement. Failure of Grantees to give such written notice within said five (5) day period shall be deemed an election by Grantees to proceed under clause (iv) above, absent an express, written agreement to the contrary approved and entered into by each Party in its sole discretion.

(c) At Close of Escrow, Grantor shall deliver to the United States, by the United States Grant Deeds and United States Rights Deed, good and marketable title to the United States Property (except title to Pond SF-2), subject only to the exceptions to title approved by the United States pursuant to this Section 6 and the applicable Access Rights. At the Close of Escrow, Grantor shall deliver to the State, by the State Grant Deeds and the State Rights Deed, good and marketable title to the State Property (except title to the Quiet Title Parcel), subject

only to the exceptions to title approved by the State pursuant to this Section 6 and the applicable Access Rights.

(d) Grantor shall pay all real property taxes, general and special assessments, penalties and interest on the Property, if any, outstanding as liens at the date title vests of record in the United States and the State, whether or not such taxes and assessments are then due and payable. Grantor shall be solely responsible for obtaining any refund of real property taxes and assessments paid by Grantor with respect to the period prior to or after the Close of Escrow but refundable in any period after the Close of Escrow, and Grantees shall reasonably cooperate with Grantor in connection therewith to (i) confirm to the California Franchise Tax Board that Grantees claim no right or interest in or to any such refunds and (ii) provide Grantor with such factual information in the possession of Grantees and not otherwise available to Grantor as is necessary to allow Grantor to claim any such refunds.

(e) The State shall pay the following costs and expenses incidental to the conveyance of the State Property: escrow fees, recording fees, prepayment penalties not to exceed one percent (1%) of the unpaid balance applicable to the State Property and reconveyance fees, trustees' or forwarding fees for any reconveyance of the deed of trust or release of mortgage, and the premiums for the State Title Policy and any endorsements thereto. The United States shall reimburse Grantor at Closing as provided in Section 303 of the Act of January 2, 1971, 84 Stat. 1899, for the following: Grantor's expenses, if any, for recording fees, revenue stamps and similar expenses incidental to the conveyance of the United States Property; and any amount paid as a penalty cost for prepayment of any pre-existing recorded mortgage entered into in good faith, encumbering such real property; as well as the pro rata share of prepaid real property taxes and assessments allocable to the period subsequent to the vesting of title in the United States, or the effective date of possession of such real property by the same. The United States shall also pay directly the premium for the United States Title Policy, all endorsements thereto and if applicable, any survey required in connection therewith.

(f) Full possession and use of the United States Property (except Pond SF-2) and the State Property (except the Quiet Title Parcel) shall pass respectively to the United States and the State as of the Close of Escrow subject only to the exceptions to title approved by the United States and the State pursuant to this Section 6 and the applicable Access Rights.

(g) Grantees hereby grant to Grantor and its authorized representatives, contractors, and agents a non-exclusive license to enter the Property as of the Close of Escrow for the purposes of ingress and egress over, under and across the Property for the limited purpose of performing Grantor's post-close obligations under this Agreement subject to the rights of the United States and the State to terminate the obligations and access of Grantor under this Agreement as provided in Section 18; provided, however, that Grantor shall utilize the "Best Management Practices", as defined in the Phase Out Agreement (the "Access Rights"). In connection therewith, Grantor's access to the Property for the purpose of performing the Post-Close Work shall be in accordance with Section 10 of the Phase Out Agreement. This Section 6(g) shall survive the Close of Escrow.

(h) Grantees intend to conduct various survey activities on or about the Property prior to the Close of Escrow. In connection therewith, Grantees may identify certain issues

with respect to the Property ("Survey Matters") and may request Grantor to address the same. Grantor shall give reasonable consideration to all such requests of Grantees, provided, however, that Grantor shall have no obligation to incur or undertake any cost, expense or liability in connection therewith. In accordance with Section 5(a)(iv) above, Grantees shall provide Grantor written notice of their reasonable satisfaction with respect to all Survey Matters at least seven (7) days prior to the Close of Escrow and failure to provide such notice shall evidence Grantees' complete satisfaction with the same.

(i) Any and all income from, or amounts payable to Grantor under, any Approved Agreements shall be prorated as of midnight Pacific Standard Time on the date of Close of Escrow, on the basis of a three hundred sixty-five (365)-day year. There shall be no other prorations, except as provided in Section 6(e) above.

(j) At the Close of Escrow, Grantor shall execute and the United States shall record with the San Mateo County Recorder's Office and the Santa Clara County Recorder's Office, the two Grants of Easement attached hereto respectively as Exhibit J and Exhibit K (collectively the "United States Easements"), which United States Easements shall allow the United States the right of ingress and egress over those certain properties more particularly described in the United States Easements in accordance with the terms thereof.

(k) At the Close of Escrow, Grantor shall execute and cause to be recorded with the Alameda County Recorder's Office, the Grant of Easement attached hereto as Exhibit L (the "State Easement"), which State Easement shall allow the State the right of ingress and egress over that certain property more particularly described in the State Easement in accordance with the terms thereof.

7. Grantees' Inspections/Agreements.

(a) The agreements that the United States or the State will assume at the Close of Escrow (collectively, the "Approved Agreements"), if any, and the agreements that the United States or the State will not assume, and which Grantor shall terminate as of the Close of Escrow (collectively, the "Disapproved Agreements") are more particularly described in Exhibit G. Grantor shall be fully responsible for the payment of any fees, penalties or other sums payable in connection with the termination of any Disapproved Agreements.

(b) Grantor shall provide the United States and the State with access to the Property prior to Close of Escrow in accordance with, and pursuant to, a separate access agreement executed by the United States or the State, as applicable, and Grantor. In the event that the United States or the State requires additional access rights not provided by any such access agreement, the applicable Parties shall negotiate additional access agreements as necessary, which agreements must be acceptable to each such Party in its sole discretion.

(c) From and after the Effective Date, Grantor shall provide to Grantees or make available for inspection by Grantees at Grantor's Newark facility, copies of all material written information and documents in Grantor's possession relating to the Property, including, without limitation, title information, environmental assessments, tests, studies, maps, plans and records; and promptly upon receipt thereof, any additional material documents or information pertaining

to the Property received by Grantor in writing following the Effective Date (collectively, the "Property Documents").

This Section 7(c) shall survive for eighteen (18) months after the Close of Escrow.

(d) "Property Documents" as used in Section 7(c) shall not include Grantor's economic information, confidential and/or proprietary business information, items protected by the attorney-client privilege or attorney work product privilege, or Grantor's appraisals or analyses of the value of the Property or of the transaction contemplated by this Agreement. Notwithstanding the foregoing, Grantees may make requests to review documents excluded from the Property Documents by this Section 7(d) for Grantor's reasonable consideration.

This Section 7(d) shall survive for eighteen (18) months after the Close of Escrow.

(e) As of the Effective Date, Grantor represents to each of the Grantees that, to Grantor's actual knowledge, as defined below, the Approved Agreements, the Disapproved Agreements and the documents listed in Schedule 1, if any, are all of the unrecorded written agreements and documents within Grantor's actual possession that encumber title to the United States Property or the State Property ("Grantor's Representation"). Grantor's Representation shall survive for a period of twelve (12) months after the Close of Escrow. Any claim which either Grantee may have at any time against Grantor for a breach of Grantor's Representation, whether known or unknown, which is not specifically asserted by written notice to Grantor within such twelve (12) month period shall not be valid or effective, and Grantor shall have no liability with respect thereto. In the event that before the Close of Escrow the State and/or the United States discovers something that would make Grantor's Representation untrue or incorrect (an "Exception Matter"), the State's or the United States', as applicable, only remedy shall be to terminate this Agreement at least ten (10) days prior to the Close of Escrow, in which event the Parties shall have no further rights or obligations hereunder. If either the State or the United States obtains knowledge of any Exception Matter before the Close of Escrow, but Grantees nonetheless proceed with the Close of Escrow, the Party that discovered the Exception Matter shall consummate the Close of Escrow subject to such Exception Matter and Grantor shall have no liability to such Party with respect to such Exception Matter. Grantees may request Grantor to address any Exception Matters identified prior to the Close of Escrow and Grantor shall give reasonable consideration to all such requests, provided, however, that Grantor shall have no obligation to incur or undertake any cost, expense or liability in connection therewith. For purposes of this Agreement, the phrase "to Grantor's actual knowledge" shall be deemed to mean and is limited to the current actual knowledge only of Robert Douglass and Chuck Taylor at the times indicated, and not any implied, imputed or constructive knowledge of such individuals or of Grantor and without any independent investigation or inquiry having been made or any implied duty to investigate or make any inquiries; it being understood and agreed that such individuals shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

8. Covenants. Grantor shall not take any of the following actions between the Effective Date and the date of Close of Escrow without the prior written consent of the United States and the State: (a) make or allow to be made, extend or allow to be extended, any leases, contracts, options or agreements whatsoever affecting the Property, except those which will be fully

performed or terminated by Grantor as of the Close of Escrow; (b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the Property or any portion(s) thereof; (c) permit any mortgage, deed of trust or other lien to be foreclosed upon due to Grantor's acts or omissions, including failure to make a required payment or failure to obtain the consent of a beneficiary under any deed of trust and/or a mortgagee of the Property, if such consent is required under the terms of such deed of trust and/or mortgage; (d) use, produce, treat, store, release, transport or dispose of any material, substance or waste designated or regulated under any Environmental Law (as defined in Section 12) as "hazardous," "toxic," "pollutant," "contaminant," or similar designation on or from the Property, except as permitted by law; or (e) do any other act by which the title to the Property may be encumbered.

9. Grantor's Work.

(a) Grantor shall be responsible for satisfactorily and timely addressing each recognized environmental condition on the Property identified in the ESA or in the pre-acquisition contaminant surveys prepared on behalf of the Grantees and of which the United States or the State provide Grantor written notice before the Effective Date ("Environmental Work"). Grantor shall be required to complete the Environmental Work to the extent necessary to comply with applicable laws, regulations, enforceable agreements and applicable clean-up standards pursuant thereto by any government entity with authority to regulate clean-up ("Closure Standard"). Grantor and the United States or the State, as applicable, will mutually agree, in each Party's reasonable discretion and as required by applicable law, upon the identification of each segment or unit of Environmental Work and the Closure Standard for such Environmental Work. Such mutual agreement shall be documented and that documentation, upon written agreement by the affected Parties, shall be incorporated in this Agreement as Exhibit M.

(i) Grantor shall endeavor to complete the Environmental Work described in Exhibit M in accordance with this Section 9 and Sections 10(a) and (b) prior to the Close of Escrow, unless the Parties otherwise agree in writing. Notwithstanding the foregoing, the Parties agree that if the Environmental Work described in Exhibit M is not completed by the Close of Escrow any such work not completed by the Close of Escrow shall be included in the Post-Close Environmental Work to be completed in accordance with Section 9(a)(ii) and (iii) and Section 10 below.

(ii) Prior to the Close of Escrow, the Parties shall agree in writing upon the Environmental Work Grantor shall complete after the Close of Escrow ("Post-Close Environmental Work"). Such agreement shall specifically delineate for each and every segment or unit of Post-Close Environmental Work: (1) the projected schedule for Grantor's performance and completion of such work; and (2) the estimated cost of completing such work ("Environmental Cost Estimate"). The Environmental Cost Estimate shall be based upon the costs of hiring a party who is not an Affiliate of Grantor ("Independent Third Party") to perform the Post-Close Environmental Work in accordance with this Agreement.

(iii) Grantor's obligations to complete the Environmental Work include and shall be deemed complete for each segment or unit only when Grantor has provided the United

States or the State, as applicable, either (1) written acknowledgement from all government agencies asserting jurisdiction over the such work stating that the Closure Standard applicable to such segment or unit of Environmental Work has been met and no further action is necessary (“Closure Letter”), or (2) if a Closure Letter cannot be obtained, a report (“Closure Report”) signed by an Independent Licensed Professional experienced in the evaluation of work of the type to be done as the Environmental Work that summarizes the work done and verifies that the applicable Closure Standard has been achieved; provided, however, in either case, the United States or the State, as applicable, concurs that the completion of the Environmental Work has been accomplished, which concurrence shall not be unreasonably withheld or delayed by the United States or the State. The Closure Report shall be based upon the scope of work related to the Environmental Work and include without limitation, a summary of the work done, any data obtained, and any analytical findings made to determine that Environmental Work required by this Agreement has been completed. Grantor shall provide to the United States or State, as applicable, a split of any physical samples obtained by the Independent Licensed Professional in preparation of the Closure Report.

(b) Grantor shall remove or caused to be removed from the Property, at Grantor’s sole cost and expense, all of the items described on Exhibit N (“Removal Work”). Grantor shall perform and complete the Removal Work in compliance with, to the extent applicable, Section 10.

(c) Grantor shall be responsible for addressing each well identified in Exhibit O, to the satisfaction of the Alameda County Water District and any other governmental agency with jurisdiction over such wells (“Well Work”) and upon such satisfaction Grantor shall have no further obligations under this Section. Grantor shall perform and complete the Well Work in compliance with Section 10 and shall coordinate all Well Work with the State or the United States, as applicable. Prior to the Close of Escrow, Grantor and the State or the United States, as applicable, shall agree in writing upon the projected schedule for and estimated cost of completing the Well Work (“Well Work Cost Estimate”). The Well Work Cost Estimate shall be based upon the costs of hiring an Independent Third Party to perform the Well Work in accordance with this Agreement and shall be identified in Exhibit O. This Sub-Section 9(c) does not limit any other obligations under this Agreement.

10. Post-Close Work. This Section 10 shall govern the performance and completion of the Post-Close Environmental Work, if any, and Well Work (individually and collectively, “Post-Close Work”). For each and every segment or unit of the Post-Close Work:

(a) Grantor shall comply with Section 3 of the Phase Out Agreement. For purposes of this Sub-Section, copies to be provided pursuant to Sub-Section 3(b) of the Phase Out Agreement shall be provided, if to the United States, to the Fish and Wildlife Refuge Manager, and if to the State, to the Department of Fish and Game, Regional Manager, Central Coast Region at the notice addresses identified in Section 16 of this Agreement.

(b) In addition to Grantor’s other obligations hereunder, the Post-Close Work shall include and shall be deemed complete only after (1) the condition of the surface of and any structures on the Property where the Post-Close Work has occurred has been restored to substantially the condition existing prior to the commencement of the Post-Close Work,

reasonable wear and tear excepted, unless otherwise necessary to complete such activities; (2) any wells or soil borings installed in performance of the Post-Close Work have been legally closed; and (3) any equipment brought or installed on the Property in the performance of the Post-Close Work has been removed and any material damage created as a result of such use or installation has been substantially repaired or otherwise corrected. Grantor shall not leave as a result of the Post-Close Work any levee in a materially breached condition nor with any substantial holes or pits.

(c) In addition, for each and every segment or unit of Post-Close Work Grantor shall provide the United States or the State, as applicable, with financial assurance that Grantor shall complete all of the Post-Close Work in accordance with this Agreement, as follows:

(i) Grantor shall establish on or before Close of Escrow and maintain throughout the performance and completion of the Post-Close Work, financial security in favor of the United States or the State, as applicable, or its designee assuring that (A) one hundred ten percent (110%) of the amount of the agreed upon Environmental Cost Estimate shall be available in the event Grantor breaches or defaults in the performance of the Post-Close Environmental Work and (B) one hundred ten percent (110%) of the amount of the agreed upon Well Work Cost Estimate shall be available in the event Grantor breaches or defaults in the performance of the Well Work (the work described in clauses (A) and (B) is referred to herein as the "Secured Post-Close Work"). Grantor may provide such financial security in one or more of the following forms:

(1) a surety bond guaranteeing performance of the Secured Post-Close Work;

(2) one or more irrevocable standby letters of credit;

(3) a certificate of deposit; or

(4) a financial mechanism other than as specified Sub-Sections (1) - (3) of this Section 10(c)(i) ("alternate security"), provided that prior to its use the alternate security has been submitted to and approved by the United States or the State, as applicable. The alternate security shall be at least equivalent to the financial mechanisms specified in Sub-Sections (1) - (3) of this Section. In evaluating the equivalency of a mechanism the United States or the State may consider the certainty and timeliness of the availability of funds for performance of the Secured Post-Close Work as well as any other factors the United States or the State deems to be appropriate. The United States and the State may require Grantor to submit additional information reasonably necessary to make the determination of equivalency.

Provided, however, that the financial security shall be in a form and substance that is adequate and is acceptable to the United States or the State, as applicable, in its reasonable discretion. Without limiting the preceding clause, the State, in its sole discretion, may reject financial security in the form of a surety bond.

Grantor shall (I) submit the surety bond (if that is the form of financial security provided) or similar alternate security to the United States or the State, as applicable; or (II) deposit the letter of credit, certificate of deposit or similar alternate security into an escrow account with the Title Company and, concurrently with such deposit, irrevocably authorize and direct the Title Company ("Irrevocable Instructions"), to disburse the proceeds of such financial security in accordance with the provisions of this Section 10(c) without the need for any further instructions. The Irrevocable Instructions shall be subject to the reasonable approval of the United States and the State.

In the event that the United States or the State reasonably determines that there is a material chance that such Party, its designee or the Title Company, whichever holds the financial security, will not be able to access the financial security in the event that the United States or the State is permitted to draw upon such security in accordance with the terms of this Section 10(c), then within thirty (30) days of receipt of written notice of such a determination Grantor shall obtain and present to the United States or the State (whichever makes such determination) for approval one of the other forms of financial security listed in this Section. Grantor's provision of or inability to provide adequate financial security shall not excuse performance of any of Grantor's obligations with respect to the Secured Post-Close Work.

(ii) Grantor shall assure that the amount of financial security provided to the United States and the State, respectively, under this Agreement shall be at all times at least one hundred ten percent (110 %) of the amount of the agreed upon Cost Estimate pertaining to all segments or units of unperformed Secured Post-Close Work. Provided, however, upon completion of each segment or unit of Secured Post-Close Work Grantor may reduce the amount of the financial security to one hundred ten percent (110%) of the estimated cost (as adjusted annually for inflation) of the remaining segments or units of the Secured Post-Close Work to be completed. Such reduction shall occur, if at all, no more frequently than twice in any twelve (12) month period for each of the United States and the State, and is subject to the reasonable approval of the United States or the State, as applicable.

(iii) In the event the United States or the State reasonably believes that Grantor is in breach of its obligations with respect to the Secured Post-Close Work, such party shall provide Grantor and the Title Company (if it holds the financial security) with written notice of such breach ("Notice of Breach"). The Notice of Breach shall delineate with reasonable specificity each alleged instance of Grantor's breach. Upon receipt of the Notice of Breach, Grantor shall have thirty (30) days ("Cure Period") to cure such breach or failure to perform to the reasonable satisfaction of the notifying party or, if such breach or failure to perform cannot reasonably be cured within thirty (30) days, including, without limitation, due to an event of Force Majeure (as such term is defined in the Phase Out Agreement), to commence and diligently pursue completion of the cure within the Cure Period and provide such notifying party with written notice specifying Grantor's intent to cure such failure as promptly as is reasonably practical and specifically delineating the dates within which Grantor will diligently cure the same ("Grantor's Cure Notice").

(iv) In the event the United States or the State reasonably believes that Grantor has failed to cure such breach within the Cure Period (or, if applicable, failed to

commence and diligently pursue completion of the cure within the Cure Period and to provide Grantor's Cure Notice), the United States or the State, as applicable, shall provide Grantor and the Title Company (if it holds the financial security) with written notice of such failure, which notice shall delineate with reasonable specificity each alleged instance of Grantor's uncured breach ("Notice of Failure to Cure"). Upon Grantor's receipt of such Notice of Failure to Cure, the affected Parties agree to meet and confer to work in good faith to attempt to resolve any dispute or disagreement over Grantor's alleged uncured breach. If the affected Parties resolve the dispute or disagreement they shall promptly notify the bond surety (if a surety bond is the form of financial security provided), issuer of alternate security which the United States or the State holds, or Title Company (if it holds the financial security) of the resolution and, if applicable, instruct the Title Company to draw upon and disburse the financial security in accordance with such resolution ("Resolution Instructions").

(v) If the affected Parties have not resolved such dispute within ten (10) days of the date of giving the Notice of Failure to Cure despite such Parties' good faith efforts ("Failed Dispute Process"), the United States or the State, as applicable, shall, subject to the limitations set forth in Sections 10(c)(vii) below, be entitled to the extent provided in Section 10(c)(vi) below to (I) exercise its rights to proceed against the surety bond (if that is the form of financial security provided) or any alternate security which it holds or (II) proceed against the financial security held in the escrow account by instructing the Title Company ("Draw Instructions") to draw upon and disburse the financial security. Immediately upon its receipt of the Draw Instructions, the Title Company shall draw upon the financial security and disburse the proceeds thereof to the United States, the State, or its respective designee in accordance with the Draw Instructions and Section 10(c)(vii), below.

(vi) In the event the United States or the State, as applicable, is entitled to exercise its right to proceed against financial security pursuant to Section 10(c)(v) above, the United States and the State each agrees to exercise such right only to the extent such financial security is directly related to the costs and expenses of addressing the specific uncured breach by Grantor and the uncured breach by Grantor was identified in the Notice of Failure to Cure. The amount of financial security to which United States or the State, as applicable, shall be entitled shall not exceed the amount of the Cost Estimate applicable to the particular Post-Close Work Grantor failed to perform.

(vii) The provisions of this Section 10(c)(vii) shall apply only with respect to financial security held in the escrow account by the Title Company. Grantor shall cause, and the Irrevocable Instructions shall authorize and instruct, the Title Company to disburse the proceeds of the financial security to the United States, the State, or its respective designee on the Draw Date (as defined below) in accordance with the Draw Instructions unless only on or before the Draw Date Grantor has commenced Arbitration in accordance with Section 10(c)(viii), below and Title Company has received notice of such Arbitration. As used in this Agreement, the "Draw Date" shall mean the later of (I) the tenth (10th) day after Grantor and the Title Company's receipt of Draw Instructions from the United States or the State pursuant to Section 10(c)(v), or (II) the twentieth (20th) day after the Notice of Failure to Cure. Provided, however, that if as of the Draw Date Title Company has received Resolution Instructions, it shall instead comply with such instructions.

(viii) As used in this Agreement, "Arbitration" shall mean binding arbitration before a retired judge of the Superior Court, Appellate or Supreme Court of the State of California (the "Arbitrator") under the auspices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), in accordance with the following provisions:

(A) In the event that despite the Failed Dispute Process Grantor contests the right of the United States or the State to proceed against financial security pursuant to this Section 10(c), Grantor shall have the right to submit to Arbitration all unresolved disputes between Grantor and the United States or the State that were the subject of the Failed Dispute Process (the "Dispute").

(B) The Parties stipulate and agree that any and all necessary parties may be joined in the Arbitration, but the Parties agree to proceed with Arbitration of the Dispute even if other parties refuse to participate.

(C) Arbitration shall be initiated by written notice of a demand to arbitrate (the "Arbitration Notice") given to the United States or the State, as applicable, the Title Company (if it holds the security) and to JAMS. The Arbitration Notice shall include a plain statement of the Dispute and the relief requested. The party submitting such Arbitration Notice shall also submit true and correct copies of the documents referred to therein. Within thirty (30) days of its receipt of the Arbitration Notice, the responding party shall provide to JAMS and to Grantor the responding party's own plain statement of the Dispute, together with true and correct copies of the documents referenced therein.

(D) The affected Parties may agree on a retired judge from the JAMS panel to be the Arbitrator. If they are unable to promptly agree, either Party may request JAMS to provide the Parties with a list of three (3) available judges and each party may strike one (1). The remaining judge (or if there are two (2), the one selected by JAMS) will serve as the Arbitrator. In the event that JAMS shall no longer exist, or if JAMS fails or refuses to accept submission of the Dispute, then the Dispute shall be resolved by binding arbitration before the American Arbitration Association ("AAA") under AAA's Construction Industry Arbitration Rules then in effect, as modified or supplemented by this Section 10(c)(viii). In the event of a conflict between this Section 10(c)(viii) and such rules, this Section shall govern and control.

(E) Prior to the Arbitration, the Parties shall be allowed the following limited discovery: each Party shall be entitled to receive relevant documents and to take one (1) fact witness deposition. Each Party shall be entitled to take the depositions of all the opposing Parties' experts. Any further discovery shall only be allowed by order of the Arbitrator. All discovery shall be completed fifteen (15) days prior to the Arbitration.

(F) The Arbitration shall be completed in no more than five (5) full consecutive days. Each party shall have two (2) days to present its position through documentary or live witness evidence. Declarations of witnesses may be submitted in lieu of live witness testimony, provided the declarations have been submitted to the other parties in the proceeding at least fifteen (15) days prior to the commencement of the Arbitration hearing. One

(1) day shall be reserved for argument or the taking of such further evidence as the Arbitrator may require.

(G) The Arbitrator shall issue a binding decision within thirty (30) days of the conclusion of the Arbitration. The Arbitrator's decision shall be based upon California law or federal law, as applicable. The Arbitrator's decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the Superior Court of the State of California, subject only to challenge on the ground set forth in California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Section 10(c)(viii).

(H) Notwithstanding anything contained herein, the Arbitrator shall only be authorized to determine whether or not the applicable portion of the financial security is to be paid and shall have no authority to make any other judgments or awards. In addition, any draw upon the applicable financial security made after the completion of any Arbitration proceeding and on the basis of an Arbitration judgment or award shall be limited to the amount set forth in such judgment or award.

(I) Any Arbitration between Grantor and the United States shall be conducted in Alameda County, California. Any Arbitration between Grantor and the State shall be conducted in Sacramento County, California.

(J) The non-prevailing Party shall bear all reasonable fees and expenses of the Arbitrator.

(ix) Financial assurances provided pursuant to this Section 10(c) shall be issued for a period of at least one (1) year, and shall provide that the expiration date will be automatically extended for a period of at least one (1) year on each successive expiration date unless, at least one hundred twenty (120) days before the current expiration date Grantor, the United States or the State, as applicable, and the Title Company (if it holds the security) have received notice from the issuing institution of its decision not to extend the expiration date, as evidenced by the return receipts. The financial assurance mechanism shall provide that any unused portion of the financial security shall be available for one hundred twenty (120) days after the date Grantor, the United States or the State and, if applicable, the Title Company have received such notice, as shown on the signed return receipts. If a provider of financial assurance fails to extend the expiration date of any financial security, Grantor shall provide the United States and the State alternate financial assurance as specified in this Section 10(c) within sixty (60) days after receiving the notice such failure. If Grantor does not provide such alternate financial assurance on or before the expiration of such sixty (60)-day period, the United States or the State shall have the right to immediately (I) proceed against the surety bond or any alternate security which it holds and hold any resulting proceeds in escrow or (II) proceed against the financial security held in the escrow account by instructing the Title Company to draw upon the entire unused portion of such financial security and hold the same in escrow in which case the proceeds shall consist the financial security and may be drawn upon and distributed only in accordance with this Section 10(c).

11. Condition of Property.

(a) Except as expressly provided in this Agreement and the Phase Out Agreement, as of the Close of Escrow, Grantor shall have no responsibility or obligation to manage, repair or operate the Property.

(b) The United States and the State each acknowledge that it independently or through its respective agents, has been given access to the United States Property or the State Property, as applicable, prior to the Effective Date and that it has made, or will have made, such inquiries, inspections, tests, studies and analyses of such Property and of any improvements thereon as the United States or the State, respectively, deems necessary or desirable in connection with this transaction.

(c) Physical Condition.

(i) Grantees acknowledge and agree that Grantor is conveying and Grantees are acquiring and accepting the Property in its current condition except as expressly provided in this Agreement and the Phase Out Agreement. Except as expressly provided in this Agreement or the Phase Out Agreement, Grantor disclaims any and all representations and warranties, express or implied, from Grantor or its agents as to any matter concerning the Property including without limitation fitness for any particular purpose for which Grantees may elect to use the Property.

(ii) The United States and the State each specifically acknowledge that it has satisfied itself as to the acreage of the Property it is to acquire under this Agreement and the square footage of any structures on such Property.

(iii) Grantees acknowledge the disclosures made by Grantor regarding the Property set forth in Schedule 2 attached hereto and made a part hereof (the "Disclosures"). Grantor disclaims any and all representations and warranties with respect to such Disclosures.

(d) The provisions of this Section 11 do not in any way relieve any Party of any obligation under this Agreement, the Phase Out Agreement or any other document executed and delivered by any Party to any other Party pursuant to this Agreement.

(e) The provisions of this Section 11 shall survive the Close of Escrow.

12. Environmental Liability.

(a) The Parties acknowledge and agree that nothing in this Agreement constitutes or shall be deemed a release of Grantor by Grantees of liability, if any, for the cleanup of hazardous materials under applicable Environmental Law. Grantees each hereby reserve all rights and claims or causes of action, if any, against Grantor or any other person or entity under applicable Environmental Law.

(b) As used in this Agreement, "Environmental Law" means any and all federal, state or local laws (whether under common law, statute, ordinance or other law, code, rule,

regulation or judicial or administrative interpretation of such) relating to pollution or protection of the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code § 25300 et seq.), the California Hazardous Waste Control Law (California Health and Safety Code § 25100 et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code § 13000 et seq.).

(c) This Section 12 relates only to the environmental condition of the Property and this Section 12 shall not be interpreted to be a release or waiver of any claims, rights or obligations under this or any other section of this Agreement.

(d) The provisions of this Section 12 shall survive the Close of Escrow.

13. Limitation on Liability. The obligations of Grantor are intended to be binding only on the property of Grantor and shall not be personally binding upon, nor shall any resort be had to, the private properties of any of its trustees, officers, beneficiaries, directors, members or shareholders, or any employees or agents of Grantor.

14. Remedies.

(a) If prior to Close of Escrow, Grantor fails to perform any of its material obligations under this Agreement for any reason except failure of Grantees to perform any of their material obligations under this Agreement, Grantees shall have the following alternative rights as Grantees' sole remedy (i) terminate this Agreement by giving Grantor written notice of termination prior to Close of Escrow, in which event the Parties shall have no further rights or obligations hereunder; (ii) specifically enforce Grantor's obligations under this Agreement; or (iii) waive the failure and breach by Grantor, in Grantees' sole discretion, and proceed to the Close of Escrow.

(b) The obligations of Grantor under the provisions of this Agreement that survive the Close of Escrow, and the obligations of Grantor under the Phase Out Agreement, are a material part of the consideration to Grantees. If, following Close of Escrow, Grantor fails to perform any of those obligations for any reason except failure of Grantees to perform any of their material obligations under this Agreement, then in addition to any and all other remedies available under this Agreement or the Phase Out Agreement, Grantees shall have the right either to (i) specifically enforce Grantor's obligations, or (ii) recover damages for Grantor's breach.

(c) The State shall be entitled to recover from Grantor the State's reasonable attorneys' fees approved by binding court order in any lawsuit brought pursuant to this Agreement where the State prevails over Grantor. Grantor shall be entitled to recover from State Grantor's reasonable attorneys' fees approved by binding court order in any lawsuit brought pursuant to this Agreement where Grantor prevails over the State. This Sub-Section shall not limit any of the remedies available to the Parties.

15. Risk of Loss. So long as the condition contained in Section 5(a)(iii) above is satisfied or waived, Grantees shall acquire the Property for the Purchase Price as required by the terms hereof without regard to the occurrence or effect of any damage to the Property or destruction of any improvements thereon as a result of any peril, including, without limitation, fire, storm or earth movement, or condemnation or threatened condemnation of any portion of the Property occurring after the Effective Date. Upon the Close of Escrow, there shall be a credit against the Purchase Price due hereunder equal to the amount of any condemnation awards collected by Grantor as a result of any such destruction or condemnation. If the condemnation award has not been collected as of the Close of Escrow, then concurrently with the Close of Escrow Grantor shall assign all of its right, title and interest in and to such award to Grantees.

16. Notices. Any notice, approval, consent or other communication ("Notice") that a Party desires or is required to give under this Agreement shall be in writing and shall be given in the manner set forth below. Notices shall be addressed to the intended recipient at its address set forth in this Section 16, or to such other address as the Party may have designated for notice purposes by giving notice of change of address under the provisions of this Section 16, with copies to the other Parties and the Participating Foundations. Notice shall be given by one of the following methods: (i) recognized overnight common carrier courier service that guarantees next-day delivery; (ii) delivery in person or by messenger; (iii) deposit in the United States mail, first class and postage prepaid with return receipt requested; or (iv) facsimile transmission with written confirmation of receipt. Notices delivered by overnight courier, in person or by messenger shall be deemed to have been given upon delivery, Notices delivered by United States mail shall be deemed to have been given upon receipt, and Notices given by facsimile transmission shall be deemed to have been given upon written confirmation of receipt of the facsimile during business hours on a business day which is neither a United States federal nor a California state holiday.

Grantor:

Cargill, Incorporated
15615 McGinty Road
West Wayzata, MN 55391-2398
Attn.: William C. Britt
Phone: (952) 742-6216
Fax: (952) 742-7580

Escrow Holder:

First American Title Company
135 Main Street, Suite 1200
San Francisco, CA 94105
Attn.: Kimberleigh J. Toci
Phone: (415) 837-2251
Fax: (415) 398-1750

With copies to:

Cargill, Incorporated
Law Department/24
15615 McGinty Road West
Wayzata, MN 55391-2398
Attn.: Salt Attorney/SF Bay Area
Phone: (952) 742-6110
Fax: (952) 249-4155

The Participating Foundations:

Resources Law Group
555 Capitol Mall, Suite 1590
Sacramento, CA 95814
Attn: Michael Mantell, Esq.
Phone: (916) 442-4880
Fax: (916) 442-4193

and to:

Cargill, Incorporated
7220 Central Avenue
Newark, CA 94560
Attn.: Manager, Real Property
Phone: (510) 790-8156
Fax: (510) 790-8180

Grantees:

United States

United States Department of Interior
U.S. Fish and Wildlife Service
Sacramento Realty Field Office
2800 Cottage Way, W-2610
Sacramento, CA 95825
Attn.: Chief, Sacramento Realty Field
Office
Phone: (916) 414-6446
Fax: (916) 414-6462

State

State of California
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95814
Attn.: Executive Director
Phone: (916) 445-8448
Fax: (916) 323-0280

With copies to:

U.S. Department of Interior
Office of the Field Solicitor
1111 Jackson Street, Suite 735
Oakland, CA 94607
Attn: Field Solicitor
Phone: (510) 817-1460
Fax: (510) 419-0143

With copies to:

State of California
Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, CA 95814
Attn: General Counsel
Phone: (916) 654-3821
Fax: (916) 654-3805

Fish and Wildlife Refuge Manager:

U.S. Fish and Wildlife Service
Don Edwards SF Bay Wildlife Refuge
P.O. Box 524
Newark, CA 94560-0524
Attn: Refuge Manager
Phone: (510) 792-0222
Fax: (510) 792-5828

Department of Fish and Game, Central Coast Region:

California Department of Fish and Game
Central Coast Region
P.O. Box 47
Yountville, CA 94599
Attn.: Regional Manager
Phone (707) 944-5500
Fax (707) 944-5563

17. Assignment. Except as specifically provided in this section below, Grantees' rights and obligations hereunder shall not be assignable without the prior written consent of Grantor, which consent shall be given or withheld in Grantor's sole discretion. Grantor agrees, however, that the United States may assign this Agreement in part or in whole to the State and the State may assign this Agreement in part or in whole to the United States. Upon any such assignment the assignor shall be released from its obligations and liabilities under this Agreement accruing after such assignment, provided that any such assignment is made pursuant to a document

which legally binds the assignee to the terms of this Agreement and the obligations of the assignor under this Agreement, and Grantor receives reasonable assurance from the assignee demonstrating that the assignee has the ability to perform the assignor's obligations hereunder. Subject to the provisions of this section, this Agreement shall inure to the benefit of and be binding upon Grantor and Grantees and their respective successors and assigns. Grantees hereby consent to an assignment by Grantor of its rights hereunder to an accommodation party if and only to the extent reasonably necessary to effect a transaction contemplated by, and meeting the requirements of, Section 1031 of the Internal Revenue Code of 1986, as amended ("Section 1031"), if any, in accordance with Section 21. No such assignment shall release or relieve Grantor of any obligations or liabilities under this Agreement or the Phase Out Agreement.

18. Amendment; Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. In the event that the United States or the State, in its sole and complete discretion, agrees to waive all or part of Grantor's post-close obligations under this Agreement, this Agreement shall terminate with respect to the portion of the post-close obligations and corresponding provisions of this Agreement affected by such waiver.

19. Interpretation. The captions and headings of this Agreement are for convenience only and do not define, limit or otherwise affect the meaning of any term or provision hereof.

20. Brokers. Grantees and Grantor each represent and warrant to the other that the representing Party has not dealt with any broker or finder, and no broker or other person is entitled to any commission or finders' fee as a result of the actions or conduct of the representing Party, in connection with the transaction contemplated by this Agreement.

21. 1031 Exchange. Grantor may desire to effect one or more tax-deferred like-kind exchanges with respect to its disposition of the Property (the "Grantor's Exchange"), pursuant to Section 1031. Grantor will structure the Grantor's Exchange at its sole risk, cost and expense. Neither the United States nor the State shall have any obligation to extend the date of Close of Escrow; to incur any liability, incur cost or expense which is not reimbursed by the Grantor; or to acquire any property other than the Property. Grantees' sole obligation in connection with Grantor's Exchange shall be to execute such commercially reasonable documents as may be reasonably acceptable to Grantees and Grantor and necessary to effect Grantor's Exchange in accordance with this Section 21 and applicable laws and regulations and to reasonably accommodate a transfer of Grantor's interest in this Agreement to an accommodation party to such exchange in accordance with Section 17. Grantor shall indemnify, protect, defend and hold harmless the United States and the State from any cost or liability either of them may incur to the extent such cost is incurred in cooperating and assisting Grantor in any Grantor's Exchange.

22. Acknowledgement. Within ten (10) business days after written request of Grantor after the Close of Escrow, the United States and the State each agree to execute and return to Grantor

Part IV, "Donee Acknowledgment", of an Internal Revenue Service Form 8283 completed by Grantor with respect to, and consistent with, the terms of this Agreement.

23. Entire Agreement. This Agreement and the Phase Out Agreement, together with the Exhibits to each such agreement, the access agreements referenced in Section 7(b) above (collectively, the "Access Agreements"), if any, the Joint Statement of Just Compensation, and the documents to be executed or delivered by Grantor as of the Close of Escrow contain all covenants made by Grantees and Grantor and constitute the entire understanding between Grantees and Grantor with respect to the subject matter hereof.

Previously, the United States and Leslie Salt Co., a predecessor in interest to Grantor, entered into an Agreement dated June 29, 1979 ("1979 Operating Agreement"), regarding their rights and responsibilities regarding certain real property rights held by Leslie Salt Co., including but not limited to the Reserved Rights of Grantor. The terms and conditions of the 1979 Operating Agreement, to the extent relating to the Leslie Rights, shall not be interpreted to amend or otherwise alter any term or condition of this Agreement. The 1979 Operating Agreement between the United States and Leslie Salt Co. shall remain in full effect as to all Reserved Rights of Grantor not conveyed to the United States as the Leslie Rights under this Agreement. For the purposes of the Phase Out Agreement (Exhibit I hereto), the term "United States Rights" shall have the same meaning as Leslie Rights.

24. Survival. Notwithstanding anything to the contrary herein, no representations, warranties, covenants or agreements of the Grantor contained herein shall survive the Close of Escrow with the exception only of the following provisions, which shall survive the Close of Escrow: Section 2, Sub-Sections 3(b) through 3(d), 4(i), 4(j), 6(d), 6(g), 7(a), 7(c) through 7(e) (for the period of time stated within such Sections), Sections or Subsections 9, 10, 11, 12, 13, 14(b), 14(c), 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34 and the last sentence of 21.

25. No Recording; No Property Interest. Neither this Agreement or any memorandum or short form thereof shall be recorded. This Agreement shall not constitute a reservation by Grantor of any ownership interest in the Property or any portion thereof except as otherwise stated in Section 4(i) with respect to Pond SF-2 and in Section 4(j) with respect to the Quiet Title Parcel.

26. No Third Party Beneficiary. The provisions of this Agreement, the Phase Out Agreement, the Access Agreements and the documents to be executed and delivered at Close of Escrow are and will be for the benefit of Grantor, the United States Department of Interior, Fish and Wildlife Service and the State of California, Department of Fish and Game and Wildlife Conservation Board only and are not for the benefit of any third party. Nothing in this Section 26 is intended to negate, limit or otherwise affect any charitable contribution made by Grantor hereunder.

27. Counterparts. This Agreement may be executed in multiple counterparts each of which shall constitute an original as against the Party signing the counterpart and all of which, taken together, shall constitute one and the same agreement.

28. Drafting. Each of the Parties acknowledges that this Agreement is the product of joint draftsmanship and negotiation. No Party shall be deemed the drafter of this Agreement and no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

29. Expenses. Except as otherwise expressly provided in this Agreement, each Party shall pay its own expenses incurred in connection with this Agreement and the transactions it contemplates.

30. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the United States and the State of California.

31. Drafts. Grantees and Grantor agree that submission of a draft of this Agreement by one Party to another is not intended to be an offer to enter into a legally binding contract with respect to the conveyance and acquisition of the Property. The Parties shall be legally bound with respect to the acquisition and conveyance of the Property pursuant to the terms of this Agreement only if and when the Parties have been able to negotiate all of the terms and provisions of this Agreement, including its Exhibits, and the Phase Out Agreement, including its Exhibits, in a manner acceptable to each of the Parties in its respective sole discretion, and Grantees and Grantor have fully executed and delivered to each other a complete executed and approved counterpart of this Agreement and the Phase Out Agreement.

32. No Partnership. The relationship of Grantees and Grantor is solely that of purchasers/donees and seller/donor with respect to the Property and no partnership or joint venture exists between them.

33. Exhibits. The following Exhibits and Schedules referred to in this Agreement are attached hereto and incorporated by reference herein:

Exhibit A	Map
Exhibit A-1	Legal Description of Ditch Adjacent to Moffett Field
Exhibit B-1	Legal Description of Alviso/West Bay Land
Exhibit B-2	Description of Land Subject to Leslie Rights
Exhibit C-1	Legal Description of Baumberg/Napa Land
Exhibit C-2	Legal Description of Land Subject to Baumberg Rights
Exhibit D-1	United States Grant Deeds
Exhibit D-2	State Grant Deeds
Exhibit E-1	United States Rights Deed
Exhibit E-2	State Rights Deed
Exhibit F-1	Legal Description of Pond SF-2
Exhibit F-2	Legal Description of Quiet Title Parcel
Exhibit F-3	State Quitclaim Deed
Exhibit G	Approved and Disapproved Agreements
Exhibit H	Form of Assignment and Assumption Agreement
Exhibit I	Phase Out Agreement
Exhibit J	United States Easement – San Mateo County

Exhibit K	United States Easement – Santa Clara County
Exhibit L	State Easement – Alameda County
Exhibit M	Environmental Work
Exhibit N	Removal Work
Exhibit O	Well Work
Schedule 1	Additional Property Documents
Schedule 2	Disclosures

34. Time is of the Essence. The Parties agree that time is of the essence in performing their obligations under this Agreement.

35. Required Approvals. This Agreement is subject to approval of (a) the State of California Wildlife Conservation Board (as defined in Fish and Game Code Section 1320) following a public meeting and (b) the Director of the State of California Department of General Services (collectively, the “State Approvals”). This Agreement is also subject to the fulfillment of the provisions of this Agreement to the satisfaction of the Chief of Realty, United States Fish and Wildlife Service, and approval by the United States Department of the Interior, Solicitor’s Office, and, if necessary, the United States Attorney General (the “U.S. Approval”). The execution and delivery hereof by the United States shall indicate that the U.S. Approval has been obtained, provided the U.S. Approval shall not limit the other conditions hereof that benefit the United States, including its right to review title to the United States Property pursuant to the provisions of Section 6 hereof. This Agreement and the transaction contemplated hereby are subject to the approval of Grantor’s Board of Directors (“Grantor Approval”), which approval, if obtained, shall be evidenced in writing and provided to Grantees by Grantor.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first above written.

GRANTOR:

CARGILL, INCORPORATED,
a Delaware corporation

By _____
William C. Britt, Vice President

Date: _____

Taxpayer Identification No. 41-0177680

GRANTEES' SIGNATURES FOLLOW ON SUBSEQUENT PAGES

EXECUTION COUNTERPART

GRANTEES: UNITED STATES

The Secretary of the Interior, acting by and through her authorized representative has executed this agreement on behalf of the United States of America on this ____ day of January 2003. Acceptance of this Agreement by the United States is subject to its portion of the necessary funds being made available or the approval of the reprogramming of funding to complete this transaction (the "Funds").

THE UNITED STATES OF AMERICA

By _____
Title: _____
U.S. Fish and Wildlife Service

EXECUTION COUNTERPART

GRANTEES: STATE

STATE OF CALIFORNIA
Recommend approval by the
Wildlife Conservation Board

By: _____
Al Wright, Executive Director

Date: _____

APPROVED:

STATE OF CALIFORNIA
Department of General Services

By: _____

STATE OF CALIFORNIA
Department of Fish and Game
Wildlife Conservation Board

By: _____
Al Wright, Executive Director

Date: _____

EXECUTION COUNTERPART